

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

AN INDIVIDUAL KNOWN TO THE
DEFENDANT AS 08mist096.jpg
AND 08mist067.jpg,

Plaintiff,

v.

5:08-cv-917

JON DAVID FALSO,

Defendant.

THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

Plaintiff commenced the instant action pursuant to 18 U.S.C. §§ 2252A(f) and 2255(a) arising out of Defendant's conviction for violating 18 U.S.C. § 2252A(a)(2)(A) and (B) and 18 U.S.C. § 2256. Presently before the Court is Defendant's motion for summary judgment pursuant to Fed. R. Civ. P. 56 on the ground that § 2255A is unconstitutional because it violates the Double Jeopardy Clause.

Pursuant to Fed. R. Civ. P. 5.1(a):

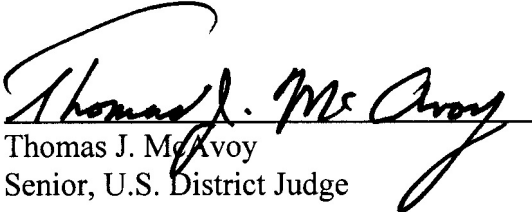
A party that files a . . . written motion . . . drawing into question the constitutionality of a federal . . . statute must promptly: (1) file a notice of constitutional question stating the question and identifying the paper that raises it, if (A) a federal statute is questioned and the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity; . . . and (2) serve the notice and papers on the Attorney General of the United States. . . either by certified or registered mail or by sending it to an electronic address designated by the attorney general for that purpose.

Subsection (b) permits the Attorney General to intervene within sixty days after the notice is filed.

Here, while Defendant appears to have served a copy of the motion on the Attorney General, he did not file a notice of constitutional question and he did not serve the Attorney General in a manner required by the Rule. Accordingly, the motion for summary judgment is DENIED WITH LEAVE TO RENEW upon refiling the motion papers together with: (1) a notice of constitutional question; and (2) a certification that a copy of the notice of constitutional question and the motion papers were properly served on the Attorney General. Defendant shall select the next available return date that is at least **sixty days** from the date the motion for summary judgment and the notice of constitutional question is filed.

IT IS SO ORDERED.

Dated: November 16, 2009


Thomas J. McAvoy
Senior, U.S. District Judge